



8180 ANCHOR DRIVE • PORT ARTHUR, TX 77642  
P.O. BOX 778 • NEDERLAND, TX 77627  
V. 409. 729. 4588 • info@navigationdistrict.org  
www.navigationdistrict.org

April 10, 2023

Mr. Edwin Quinones, Attorney  
Office of Regional Counsel (ORCDS)  
U.S. EPA Region 6  
1201 Elm Street  
Dallas, Texas 75270

*Via E-mail [quinones.edwin@epa.gov](mailto:quinones.edwin@epa.gov) and  
Certified Mail. Return Receipt Requested*

Re: Special Notice of Potential Liability and Draft Consent Decree  
Star Lake Canal Superfund Site located in and around the cities of Port Neches and  
Groves, Jefferson County, Texas  
SSID No. 06GY, EPA ID No. TX0001414341 (collectively "Site")

*Inadmissible Good Faith Offer of Compromise—Subject to Federal Rule of Evidence 408*

Dear Mr. Quinones:

I write in response to the Special Notice Letter dated February 2, 2023, ("Letter") from the United States Environmental Protection Agency ("EPA") to the Sabine-Neches Navigation District of Jefferson County, Texas ("SNND"), which is a political subdivision of the State of Texas. SNND received the Letter the week of February 13, 2023. EPA's Letter invited SNND to submit a good faith offer to conduct or finance the Remedial Action set forth in the Record of Decision ("ROD") attached to the Letter. The Letter also sets a deadline of April 11, 2023, for SNND to provide EPA with a good faith offer. Section 122(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") requires a good faith proposal to conduct or finance the response action at the site for which the Letter was issued be made within 60 days of receipt of the Letter. This response is made by SNND and is intended to be its good faith offer to EPA. This response is timely and complies with Section 122(e).

EPA's Letter advised that a group of Potentially Responsible Parties ("PRP") had previously been formed and had engaged in negotiation with EPA and in 2016 had entered into a Settlement Agreement and Consent Decree on Remedial Design (Enclosure 3 to the Letter). EPA's letter further invited SNND to contact this existing PRP group through its counsel Tobias Smith. SNND did contact the PRP group through Mr. Smith and has begun the process of negotiating SNND's equitable share of responsibility relative to other PRPs considering all relevant factors.

### ***Good Faith Offer***

SNND is willing to finance or perform the remedy selected in the ROD (Enclosure 2 to the Letter) in an amount equal to its equitable share of responsibility in comparison to other PRPs identified at the Site. SNND is willing to either participate as a member of the existing PRP group or provide non-participatory financing as may be agreed and best be suited to implementing the selected remedy. SNND is financially able to participate. As a public entity its financial condition is a matter of public record and SNND has sufficient unrestricted funds on deposit to satisfy the initial demand made by the existing PRP group. As explained later in this letter the factual basis of the PRP's "evidence" and basis for their initial demand is in error, thus, in all instances SNND has the financial resource to finance and is willing to finance its equitable share of the remedy costs as selected in the ROD.

The Letter requests that SNND provide in its good faith offer a demonstration of its technical capability to carry out the remedial action, including identification of the firm(s) that may conduct the work or a description of the process that will be undertaken to select the firm(s). In response SNND states that it does not internally have the technical expertise to carry out the remedial action; rather, SNND would rely on the firms already engaged by the PRP group, with which PRP group SNND is negotiating. Subject to those negotiations, SNND would provide its participatory equitable share or equitable share of the funding necessary to finance these firms' work in implementing the Remedial Action.

The Letter further requests that SNND provide in its good faith offer a detailed statement of work or work plan identifying how and when SNND intends to proceed with the Remedial Action selected in the ROD. In response SNND states that it would rely on the Statement of Work, including, without limitation, the Summary of Deliverables, which is Attachment 1 to the Statement of Work. The Statement of Work is Appendix A to Enclosure 3 of the Letter. SNND would not conduct the Remedial Action itself, but would, instead, participate with or finance the remedy through the existing PRP group in an amount equal to SNND's equitable share of responsibility for the cost of the selected remedy.

The Letter further requests that SNND provide in its good faith offer a statement of its willingness to reimburse the EPA for costs the EPA has incurred and will incur in overseeing the implementation of the remedial action. In response SNND states that it is willing to reimburse the EPA for SNND's equitable share of costs the EPA has incurred and will incur in overseeing the implementation of the remedial action. SNND proposes to do so by participating with or providing funding for this purpose through the existing PRP group or directly to EPA as may be most appropriate.

Finally, the Letter requests that SNND provide in its good faith offer a response to the proposed Consent Decree and if SNND's good faith offer contemplates modifications to the Consent Decree, to make proposed revisions or edits to the Consent Decree and submit a version showing any proposed modifications to it. In response SNND states that if it negotiates as resolution with



the existing PRP group such that SNND makes a financial contribution only to the PRP group and does not continue as a participating member of that group and is not named as a party in the Consent Decree, then SNND has no objections to the form of the Consent Decree. However, if it is negotiated with the PRP group that SNND should be a participating member of the existing PRP group rather than a non-participatory financial contributor, SNND would propose a minor revision to the Draft Consent Decree (Enclosure 5 to the Letter)—the indemnity obligations of Paragraph 25 should not be applicable to a political subdivision of the State of Texas.

This good faith offer is being made on behalf of:

Sabine-Neches Navigation District of Jefferson County, Texas  
c/o Randall Reese, Executive Director, and CEO  
8180 Anchor Drive  
Port Arthur, Texas 77642  
Telephone: (409) 729-4588

The individual negotiating on behalf of SNND will be:

L. DeWayne Layfield  
General Counsel, Sabine-Neches Navigation District of Jefferson County, Texas  
P.O. Box 3829  
Beaumont, Texas 77704  
Telephone: (409) 832-1891  
Email: dewayne@layfieldlaw.com

SNND has begun negotiations with the existing PRP group, and the conversations have been cordial. SNND is in the process of outlining its factual support for its view of its equitable share of the costs of the remedial action. SNND expects the negotiations to progress much faster beginning the week after Easter 2023. There was an initial period of factual research necessary for SNND to understand the issues at the Site and in the negotiations.

***Request for Information Under Section 122(e)(1)(B) and (C)***

Section 122(e)(1)(B) and (C) provides:

**(e) Special notice procedures**

**(1) Notice**

Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including

any action described in section 9604(b) of this title) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

\* \* \*

(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

(C) A ranking by volume of the substances at the facility, to the extent such information is available.

42 USC § 9622(e)(1)(B) and (C).

SNND respectfully requests that it be provided with all available information regarding the volume and nature of substances contributed by each potentially responsible party to the Site. SNND further respectfully requests that it be provided with all available information ranking by volume the substances at the Site.

#### ***Evidence of SNND's Status as a PRP***

SNND also notes that the Letter did not reference Enclosure 9, which appears to be a draft "nexus" report prepared by consultants working for the PRP group. SNND understands that the existing PRP group may have forwarded EPA certain materials suggesting the PRP group's view of connections between SNND and the Site. EPA's decision not to reference the draft material prepared by consultants working for the PRP group regarding their preliminary views regarding SNND's status as a PRP in the Letter, leaves SNND only to speculate whether EPA relied on these draft materials from the PRP Group.

In response to the draft materials prepared by the PRP group, SNND would like to emphasize that it has never been an owner of any real property interest (fee, easement or otherwise) in Placement Area 16, which was the focus of the draft "nexus" report. SNND has never generated any material placed at the Site or in Placement Area 16. Prior to very late 2009, SNND had no authority to take and did not take any action that caused or permitted the placement of any material into or the alteration of Placement Area 16. Prior to very late 2009, the US Army Corps of Engineers (USACE), maintained, owned an easement over, and was the only entity that authorized the placement of material into Placement Area 16. SNND's role prior to very late 2009 was to make periodic payments to USACE to reimburse USACE for costs incurred by USACE associated with all placement area maintenance and operation along the Sabine-Neches Waterway, including Placement Area 16. Even after 2009, only USACE granted permits to dredge material from the Sabine-Neches Waterway and only if USACE granted a dredging permit could material be added to Placement Area 16. SNND understands USACE also received

Mr. Edwin Quinones, Attorney  
April 10, 2023  
Page 5 of 5

a Special Notice Letter. Most of the actions the PRP group attempts to attribute to SNND were performed wholly by the USACE.

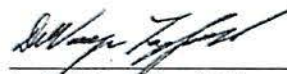
The draft "nexus" report also relies on the argument that heavy metal contamination migrated from dredged sediments placed into Placement Area 16 through decanting of the water phase from Placement Area 16 adjacent to the Molasses Bayou wetland and later into the Molasses Bayou waterway. The draft report argues that some sediments placed into Placement Area 16 in some instances had metals test results that slightly exceeded the remediation targets set for the Site. What the draft report makes no attempt to quantify is the concentration of the metals in the aqueous phase, which aqueous phase was allegedly released adjacent to the Molasses Bayou wetland and later into the Molasses Bayou waterway. All available scientific data and studies indicate the metals at issue are insoluble in water and would have been present in the aqueous phase at much much lower concentrations than in the sediments. The low concentration of metals in the aqueous phase, would not support the draft report's argument that Placement Area 16 dewatering contributed to contamination levels above the cleanup targets.

The issues identified above are not an exclusive list of the topics being discussed between the PRP group and SNND. Rather SNND is providing EPA with these examples of significant issues in the draft report as evidence that the draft report is not a sufficient basis on which to make a determination of SNND's equitable share Site costs.

Nothing contained in this letter can or should be construed as an admission by SNND of liability or responsibility for costs or actions associated with the Site or SNND's status as a party responsible for contamination present at the Site.

Thank you for your time in reviewing this good faith offer. SNND looks forward to working with EPA and the PRP group.

Sincerely,



---

L. DeWayne Layfield,  
General Counsel  
Sabine-Neches Navigation District  
Of Jefferson County, Texas

Cc: Tobias Smith via [tsmith@clarkhill.com](mailto:tsmith@clarkhill.com)